

Superfund Memorandum of Agreement

Brownfields and Voluntary Action Program MOA Track

Entered into between the State of Ohio and U.S. EPA Region V

I. Purpose

The Ohio Environmental Protection Agency (Ohio EPA) and United States Environmental Protection Agency, Region V (Region V), enter into this Superfund Memorandum of Agreement (MOA) to: (i) define the roles and responsibilities of Region V and Ohio EPA with respect to sites addressed under Ohio's Voluntary Action Program (VAP) MOA Track, which is based on Ohio Revised Code (ORC) Chapter 3746 and Ohio Administrative Code (OAC) Chapter 3745-300, and (ii) to promote the cleanup and redevelopment of contaminated or potentially contaminated properties (Brownfields) in Ohio.

II. Background

Ohio EPA and Region V recognize that the cleanup and redevelopment of Brownfields will provide significant benefit to the environment and the economy of local communities and the state of Ohio. To the extent possible, Region V and Ohio EPA seek to facilitate the productive use of industrial and commercial properties by removing or minimizing regulatory impediments to the acquisition, cleanup, transfer, and appropriate reuse of these properties. In particular, Ohio EPA and Region V endeavor to exercise their respective authorities and use their resources in ways that are mutually complementary and are not duplicative.

Region V has evaluated the VAP MOA Track, which is described in the January 24, 2001 document "Ohio VAP MOA Track Program."

- A. Region V has determined that the Ohio VAP MOA Track provides opportunities for meaningful public involvement.**

- B. Region V has determined that the response actions taken under the Ohio VAP MOA Track will be protective of human health and the environment.**
- C. Region V has determined that Ohio EPA has adequate resources to ensure that the voluntary response actions performed under the VAP MOA Track to clean up sites are performed in an appropriate and timely manner and that technical assistance and streamlined procedures are available, where appropriate, from Ohio EPA.**
- D. Region V has determined that the Ohio VAP MOA Track provides a mechanism for written approval of a volunteer's Phase I Property Assessment Report, Initial Eligibility Determination, Phase II Sampling Plan, Phase II Property Assessment Report, Risk Assessment Report, proposed Remedial Action Work Plan, No Further Action letter and a Request for a covenant not to sue.**
- E. Region V has determined that Ohio EPA will provide adequate oversight of cleanups undertaken by volunteers at sites that have entered the VAP MOA Track to ensure that the response actions are conducted in accordance with OAC Chapter 3745-300 and ORC Chapter 3746, are conducted in a timely manner, and are protective of human health and the environment.**
- F. Based on a review of relevant Ohio statutes, Region V has determined that Ohio EPA is capable of ensuring cleanup of a property if a volunteer fails to complete such cleanup and the property presents a threat to human health and the environment, through enforcement action against the responsible parties, or by state-funded cleanup. If Ohio EPA determines, either through an audit or a property inspection, that a property which has been issued a covenant not to sue under the VAP does not meet applicable standards, or that institutional controls or engineering controls have failed, Ohio EPA is obligated to insure that applicable standards are achieved or revoke the covenant, pursuant to ORC Section 3746.12(B).**

Region V has concluded that the MOA Track is adequate. Region V's evaluation of the VAP MOA Track is consistent with the U.S. EPA guidance "Interim Approaches for Regional Relations with State Voluntary Cleanup Programs, November 14, 1996."

III. Strategies

Ohio EPA and Region V seek to protect human health and the environment by encouraging the voluntary investigation and cleanup of Brownfields in Ohio by implementing the following strategies:

- A. Promote appropriate investigations and cleanups by parties participating in the MOA Track of the VAP.**
- B. Develop partnerships between Region V, Ohio EPA, other federal, state and local government agencies, and key external stakeholders in Ohio, including representatives from citizen/community groups and the private sector, to facilitate Brownfields cleanup and redevelopment.**
- C. Provide necessary information to key stakeholders in Ohio to facilitate informed decisions regarding Brownfields cleanup by property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials.**
- D. Provide adequate investigation and cleanup of Brownfields in Ohio, consistent with reasonably anticipated use of those properties, with input from key stakeholders.**

IV. Applicability

This Agreement applies to Brownfields that meet all of the following criteria:

- A. Have provided notice to Ohio EPA of entry into the MOA Track.**
- B. Have agreed to follow the procedures provided under the MOA Track and remain in compliance with those procedures.**
- C. Have completed a voluntary action in compliance with the MOA Track procedures, ORC Chapter 3746 and OAC Chapter 3745-300, and have received a covenant not to sue, that is still in effect, from the State of Ohio.**
- D. Are not any of the following:**

Listed on the NPL, proposed to be listed on the NPL (i.e., publication of notice in the Federal Register), or an HRS package has been submitted to EPA Headquarters;

Subject to cleanup under the Underground Injection Control Program of the Safe Drinking Water Act or ORC Chapters 6111 or 3734. This

does not include Class V wells unless they are required to conduct cleanup under an order or a permit;

Hazardous Substance Storage Tank Systems subject to assessment, removal or remediation under RCRA or ORC Chapter 3737;

- Subject to RCRA Corrective Action via a state or federal permit, order, or agreement (including interim status facilities), as provided in OAC Chapter 3745-55;

Subject to TSCA requirements for PCB assessment, removal or remediation as provided in OAC 3745-300-02 (C)(5).

- Subject to federal enforcement or response action under RCRA or CERCLA, including but not limited to administrative or judicial orders, permits, injunctions and consent decrees;

Subject to hazardous waste closure as defined under ORC Chapter 3734;

- Subject to solid waste closure (i.e., solid waste landfills);

- Subject to Petroleum Underground Storage Tank assessment, removal or remediation under Ohio Revised Code 3737;

Subject to oil and gas well abandonment;

Subject to state enforcement relating to the release or threat of release of hazardous substances or petroleum; or

Sites which have completed investigation and initiated a remedy under the conventional VAP.

V. Implementation

- A.** Under the MOA Track, volunteers will notify Ohio EPA of intent to enter the program by submittal of a notice of intent to participate in the VAP MOA Track before they begin activities under the program. Volunteers will publish their notice of intent in the local newspaper and Ohio EPA agrees to publish the notice of intent in Ohio EPA's Weekly Review. The public notice process that follows the submittal of the notice of intent includes:

- 1.** Publication, by the volunteer, of the notice of intent in the local newspaper.
- 2.** Publication, by Ohio EPA, of the notice of intent in Ohio EPA's Weekly Review.
- 3.** Making the notice of intent available for public inspection in the area where the site is located (e.g., local public library).

- B. Under the MOA Track, upon submitting the Proposed Remedial Action Work Plan to Ohio EPA, the volunteer will publish notice in the local newspaper indicating that the Proposed Remedial Work Plan is available for public review and comment. The comment period will be for 30 days from the date of the notice. Ohio EPA will consider all public comments received, prior to approving or providing comments on the Remedial Action Work Plan.**
- C. Ohio EPA agrees to maintain a list of sites participating in the MOA Track on the VAP web page and will provide the list to Region V on a regular basis. The public may review this list and may request any VAP document from Ohio EPA at any time regarding any of these sites. All documents which are required to be submitted to Ohio EPA for review and approval under the MOA Track are public records. These documents include:**
- 1. Phase I Property Assessment Report;**
 - 2. Initial Eligibility Determination;**
 - 3. Phase II Sampling Plan;**
 - 4. Phase II Property Assessment Report;**
 - 5. Risk Assessment Report;**
 - 6. Proposed Remedial Action Work Plan;**
 - 7. Documentation of any Significant changes to the Voluntary Action; and**
 - 8. NFA Letter and request for a covenant not to sue (CNS).**

These documents will be maintained by the volunteer in a public repository in the vicinity of the site.

- D. Ohio EPA agrees to require volunteers to conduct public meetings when a request is made, or Ohio EPA determines that there is sufficient public interest. The scope of the public meetings will vary, depending upon the concerns expressed and the level of public interest. Ohio EPA agrees to attend all public meetings, provide assistance to volunteers and certified professionals in setting up meetings, consider all public comments, and provide facilitators and presenters as needed.**
- E. Ohio EPA agrees to provide to Region V in a timely manner copies of all schedules for investigations/cleanups and copies of all covenants not to sue with respect to the sites entered into the MOA Track.**
- F. Ohio EPA agrees to provide adequate oversight of volunteers conducting cleanups at sites that have entered the MOA Track to ensure that the response actions are conducted in accordance with OAC Chapter 3745-300**

and ORC Chapter 3746., are conducted in a timely manner, and are protective of human health and the environment.

- G. At sites participating in the VAP under ORC Chapter 3746 and OAC Chapter 3745-300 and in accordance with the MOA Track procedures, Region V does not anticipate taking removal or remedial action under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) unless: (i) the site may pose an imminent and substantial endangerment to human health and the environment; or (ii) Ohio EPA has revoked the covenant not to sue previously issued for the site.

VI. Reporting

On an annual basis, Ohio EPA agrees to report to Region V on the following:

- A. number of sites that have entered the MOA Track in the previous year;
- B. number of sites for which No Further Action Letters (NFAs) have been issued under the VAP and consistent with the MOA Track procedures in the previous year;
- C. number of sites for which covenants not to sue (CNSs) have been issued under the VAP and consistent with the MOA Track procedures in the previous year;
- D. location and address of sites for which the covenant not to sue has been issued under the VAP MOA Track and subsequently revoked;
- E. number of sites for which NFAs and CNSs have been issued under the VAP, but not in accordance with the MOA Track procedures (i.e., conventional VAP), in the previous year;
- F. location and address of each site in the MOA Track; and
- G. status of each site in the MOA Track (i.e., where each site is in the process)

VII. Communication and Administration

Ohio EPA's point of contact for ensuring efficient and timely communication and administration of this MOA shall be Voluntary Action Program Manager, Division of

Emergency & Remedial Response, Ohio EPA, 122 South Front Street, Columbus, Ohio 43216-1049. Region V's point of contact for ensuring efficient and timely communication and administration of this MOA shall be Chief, Brownfield and Early Action Section, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois 60604.

If any changes are made in ORC Chapter 3746, OAC Chapter 3745-300 or Ohio EPA procedures which would affect the administration and operation of the MOA Track, Ohio EPA agrees to provide Region V written notification such changes at least thirty days before the changes are adopted or finalized.

VIII. Modification

This MOA may be modified only by written agreement signed by the Director of Ohio EPA and the Regional Administrator for U.S. EPA, Region V.

IX Third Parties

Nothing in this MOA shall constitute or be construed to create any legal rights in any third parties or to authorize a basis for any third party claims, challenges or appeals of the actions of Ohio EPA or Region V.

X. Reservation of Rights

Nothing in this MOA affects or limits the authority or ability of Ohio EPA or Region V to undertake any action authorized by law. Ohio EPA and Region V retain any and all rights and authorities that they have, including but not limited to legal, equitable, or administrative rights, and specifically including the authority to conduct, direct, oversee, and/or require environmental response actions in connection with any entity or site that participates in the MOA Track.

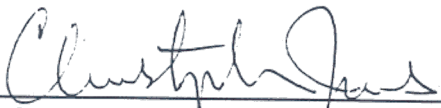
XI. Effective Date

This MOA shall be effective on the date signed by the Director of Ohio EPA and the Regional Administrator of U.S. EPA, Region V.

XII. Termination

This MOA will remain effective until Ohio EPA or Region V terminates the MOA by providing written notice of such termination to the other party. Termination shall be effective thirty days after receipt of such notice by the other party.

For the State of Ohio:

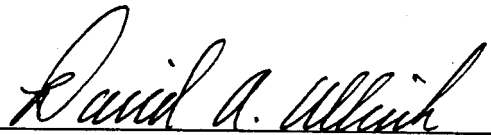


Christopher Jones, Director
Ohio Environmental Protection Agency

7-31-01

Date

For the Environmental Protection Agency:



David A. Ullrich, Deputy Regional Administrator
U.S. EPA, Region V

July 31, 2001

Date